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1	IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS							
2	EASTERN DIVISION							
3	IN RE)			18 C 7686		
4	LION AIR FLIGHT JT 6)	and related cases Chicago, Illinois March 5, 2019 9:20 a.m.				
5	This Document Relate)		019			
6	ATT ACCIONS)	9.20	a.III.			
7	TRANSCRIPT OF PROCEEDINGS - Status BEFORE THE HONORABLE THOMAS M. DURKIN							
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9	APPEARANCES:							
10	For Plaintiffs	MR. STEVEN A		ΛDT				
11	Cases 18 C 8484 and 18 C 8490:							
12								
13		cirreago, il	000	02				
14	For Plaintiffs MR. THOM. Cases 18 C 8006, Nolan La							
15	19 C 1712, 19 C 1714, and	20 N. Clark 30th Floor						
16	19 C 1715:	Chicago, IL 60602						
17	For Plaintiff	MR MTCHAFI	K	DEMETR'	τn			
18	Case 19 C 622:	MR. MICHAEL K. DEMETRIO MR. ANDREW P. STEVENS Corboy & Demetrio PC						
19		33 N. Dearbo Suite 2100						
20		Chicago, IL	606	02				
21	For Plaintiffs	MR. JOHN R.	WRO	NΔ				
22	Case 19 C 797:		h W	eisber		rona		
23		Suite 950 Chicago, IL						
24		onrougo, it	500	V -T				
25								

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      For Plaintiffs Cases 19 C 802, 19 C 1550, 19 C 1552, 19 C 1553,
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      19 C 1554, 19 C 1588, 19 C 1598, 19 C 1600, 19 C 1601,
      19 C 1623, 19 C 1624, 19 C 1625, 19 C 1626, 19 C 1695, 19 C 1697, 19 C 1698, 19 C 1701, and 19 C 1703:
 2
 3
                             MR. AUSTIN BARTLETT
                             BartlettChen LLC
 4
                             150 N. Michigan Avenue
 5
                             Suite 2800
                             Chicago, IL 60601
 6
 7
      For Plaintiffs Cases 19 C 802, 19 C 1588, 19 C 1598, 19 C 1600,
      19 C 1623, 19 C 1624, 19 C 1697, 19 C 1698, 19 C 1701, and
      19 C 1703:
 8
                             MR. MANUEL von RIBBECK
 9
                             Ribbeck Law Chartered
                             Lake Point Tower
                             505 N. Lake Shore Drive
10
                             Suite 102
11
                             Chicago, IL 60611
12
      For Plaintiff
                             MR. PETER J. FLOWERS
13
      Kartikawati:
                             Meyers & Flowers LLC
                             3 N. Second Street
14
                             Suite 300
                             Saint Charles, IL 60174
15
      For the Defendant:
                             MS. BATES McINTYRE LARSON
16
                             Perkins Coie LLP
                             131 S. Dearborn Street
17
                             Suite 1700
                             Chicago, IL 60603
18
19
                             MR. MACK H. SHULTZ JR.
20
                             Perkins Coie LLP
                             1201 3rd Avenue
21
                             Suite 4900
                             Seattle, WA 98101
22
23
      Court Reporter:
                             LAURA R. RENKE, CSR, RDR, CRR
                             Official Court Reporter
                             219 S. Dearborn Street. Room 1432
24
                             Chicago, IL 60604
                             312.435.6053
25
                             laura renke@ilnd.uscourts.gov
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(In open court.) 1 THE CLERK: Okay. 18 C 7686, Saputra v. Boeing; 2 3 18 C 8006, Satijo v. Boeing; 19 C 622, Gitelson v. Boeing; 4 19 C 797, Kurniawati v. Boeing; and 19 C 802, Irianto v. 5 Boeing. 6 THE COURT: All right. Good morning. Why don't we 7 start first with the Boeing attorneys, and then I'll go through 8 each plaintiff attorney. So for Boeing, who do we have? 9 MR. SHULTZ: Mack Shultz for The Boeing Company. 10 MS. LARSON: Good morning, your Honor. Bates Larson, 11 also on behalf of The Boeing Company. 12 THE COURT: All right. Now, for plaintiffs, why don't 13 you identify yourselves and state who the -- which case you're associated with. 14 15 MR. BARTLETT: Your Honor, Austin Bartlett with Manuel 16 von Ribbeck on behalf of plaintiff Irianto. 17 THE COURT: Okay. MR. DEMETRIO: Good morning, Judge Durkin. 18 Michael 19 Demetrio and Mr. Andrew Stevens of Corboy & Demetrio on behalf 20 of plaintiff Gitelson. 21 THE COURT: Okay. 22 MR. ROUTH: Good morning, your Honor. Tom Routh of 23 the Nolan Law Group on behalf of plaintiff Satijo. 24 MR. WRONA: Good morning, your Honor. John Wrona from

Gardiner, Koch, Weisberg & Wrona on behalf of plaintiff Fahrida

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Kurniawati.

MR. HART: Good morning, your Honor. Steven Hart, Hart, McLaughlin & Eldridge. We have two cases now in state court that we believe will be removed and before you shortly. Those are the Estate of Hantoro and the Estate of Sitharesmi.

THE COURT: Okay.

MR. BARTLETT: Judge, on that note, just to advise the Court, there's about, I think, 17 more cases of ours that the good folks at Boeing will be removing shortly.

THE COURT: Okay.

MR. FLOWERS: Good morning, your Honor. Pete Flowers on behalf of a case that's being removed. I wasn't going to step up since I didn't have an appearance on file. But it's the Kartikawati case.

THE COURT: Okay.

COURT REPORTER: Spell that for me.

MR. FLOWERS: K-A-R-T-I-K-A-W-A-T-I.

COURT REPORTER: Thank you.

THE COURT: All right. Anyone else?

And for the record, I know Mr. Demetrio just because my brother, I think, and -- was associated with his -- with the combined law firm of Corboy & Demetrio at one time before when the Clifford firm merged back with Corboy and then split up again. So -- and I've known --

MR. DEMETRIO: Indeed it did, your Honor.

THE COURT: And I've known Mr. Demetrio a number of years. We're business friends, if there is such a thing.

We're not personal friends. He's never been to my house; I've never been to his. But I'll make it as a matter of disclosure.

Okay. Well, we have -- last time you were here, you had previewed that there'd be a number -- there were a number of state court cases that would be removed to federal court. Apparently there's still a number of them in state court that are going to be -- you intend to remove on behalf of Boeing.

MR. SHULTZ: Yes, your Honor. Would it be helpful if I summarized at least what we knew about the status of the litigation?

THE COURT: Sure.

MR. SHULTZ: So as the Court is aware, there's five cases currently pending in federal court. I believe each are represented by different counsel.

We are aware of 24 cases currently pending in Cook

County. 17 are -- have been filed by Mr. Bartlett and

Mr. Ribbeck. We'll be removing those in the next two weeks, we expect, your Honor.

The case filed by Mr. Flowers was filed, I believe, about ten days ago. Boeing has not yet been served by that -- with that case. We expect to remove it once it is.

There is the case filed -- two cases filed by Mr. Hart last week. Those cases we've agreed to waive service once we

receive the appropriate form. And we expect to remove those.

There are also four additional cases that were filed in state court on February 27th by the Edelson firm and Girardi & Keese. We have not yet been served with those.

So in total, there are 24 pending cases in state court, 17 of which will be removed in the next two weeks, and the remaining seven will be removed once we're served.

THE COURT: Okay. And do any of the state court cases involve my brother?

MR. SHULTZ: Not --

THE COURT: Or the Clifford Law Office?

MR. SHULTZ: No.

MR. BARTLETT: No.

THE COURT: Okay. Again, I can't predict what will happen in the future, and I don't know what would happen if his firm filed a case in state court, it got removed and assigned to me. I'm not sure what I'll do. But that raises a conflict issue that I may not -- I'll have to deal with, and we'll see what happens.

Okay. But I just wanted to make sure no case has been filed by the Clifford Law Office against Boeing, as far as you know.

MR. SHULTZ: Not with respect to this matter, your Honor.

THE COURT: Okay. Yeah. Okay. I understand.

Well, I think what will happen to all of your cases, they'll be randomly assigned when they come over. Even if you say they're related to the lowest number case, the way the clerk's office has been doing it is they randomly assign them. And then there's a motion to reassign, which is filed before me, and I grant it so that all of the cases come before a single judge, in this case me.

There is a motion to sequence discovery which was filed as to the first case by Boeing. The plaintiff in that case, Mr. Wisner's firm, said they didn't object to it. But they thought, and I agreed with them, that I shouldn't enter such an order until we had either more or all of the plaintiff attorneys in the case to see whether they objected to the sequencing of discovery. And I agree with that. Everyone ought to have their say on that before I --

MR. DEMETRIO: Can I make --

THE COURT: -- do anything.

MR. DEMETRIO: -- one comment for the record, Judge

Durkin --

THE COURT: Sure.

MR. DEMETRIO: -- is Boeing has filed that motion in the Gitelson case also and just attached the previous filed motion. I wanted the Court to be aware that we also object to that motion for several reasons.

THE COURT: Okay. So there's at least -- I know the

Wisner firm did not, I think, last time we were here. But there is at least one objection from -- possible -- I expect there will be many objections. But at least for the record, one party is objecting to the motion to sequence discovery, to restrict it to *forum non conveniens* issues. That's correct?

MR. DEMETRIO: That's correct.

THE COURT: Okay. All right.

Well, then what I will do is set a briefing schedule. There's no reason we can't at least start the process of getting briefs in on that issue.

I'm not going to -- they -- they presented a fairly lengthy brief explaining why they think it was appropriate and cited a number of cases, and you ought to have an opportunity to respond to that.

I expect you may want to coordinate so we don't get multiple briefs, and people coming in late may just say "me too" and add something if they want to. But you're all good firms, and I'm sure that, you know, a combined effort by you may account for the arguments anyone would make.

It makes -- to me, that makes more sense than waiting for all these cases to filter their way back to me. Any objection to doing that? I guess I'm asking specifically to the people that are -- have cases before me right now.

MR. ROUTH: No objection, your Honor.

MR. WRONA: No.

MR. BARTLETT: No objection.

THE COURT: Okay. Mr. Demetrio, you agree?

MR. DEMETRIO: Yes, I agree.

THE COURT: Well, then I will let -- how much time do you want to respond to their motion? And I'll suggest that you do it as a single brief on behalf of multiple plaintiffs.

Doesn't mean you're all in -- you know, there's no class action or anything. It doesn't mean you're all in the -- doing anything other than filing a brief for convenience' purposes that relates to arguments you're all bringing.

MR. DEMETRIO: Well, Judge, I certainly don't mind helping any party in the case. I think that each plaintiff may be in a slightly different posture --

THE COURT: On this?

MR. DEMETRIO: -- procedurally given this motion.

So --

THE COURT: How so? I'm not -- I -- the -- it would seem to me the issue of discovery in full or discovery for forum non conveniens purposes is an issue that all the plaintiffs share equally. Boeing's position is -- applies to all of you. I would think the response would be similar unless people want to, you know, take a hand at drafting a different argument that covers the same area.

MR. DEMETRIO: Yeah. The only thing I'm aware of right now -- I haven't had a chance to talk to Mr. Wisner -- is

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with respect to the Gitelson case, plaintiffs have complied
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      with your order with respect to the Court-directed discovery.
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      I don't know what posture the other cases before you are at
 4
      this point.
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               I think that's a salient point and a response that I
 6
      may file in front of you.
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               THE COURT: What do you mean they've complied?
      not sure I understand.
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 9
               MR. DEMETRIO: Well, your -- you sent us an order with
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      respect to the project for Court-initiated discovery.
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               THE COURT: I waived that, though, for this case --
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               MR. DEMETRIO: Oh.
                                   I didn't get that order.
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               THE COURT: -- mandatory disclosures. No, I -- well,
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      it was on the record last time.
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               MR. DEMETRIO: Well, and that's fine.
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               THE COURT: Yeah.
               MR. DEMETRIO: I filed -- or directed my answers and
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      filed the certificate before you yesterday.
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               THE COURT: Okay.
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               MR. DEMETRIO: So, I mean, it's just progress, I
21
      guess.
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               THE COURT: No, it is.
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               MR. DEMETRIO:
                              So --
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               THE COURT: I just -- I -- my recollection is I waived
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      the mandatory disclosure obligations both sides had.
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1 MR. DEMETRIO: That may have happened before I was 2 before you. But I --3 THE COURT: It did. 4 MR. DEMETRIO: -- did get an order from you, from this Court, saying "Comply with this program." 5 6 THE COURT: And here's the problem. And it's not 7 anyone else's fault other than the way the clerk's office 8 works. All cases that are filed in the district get that 9 order. I am -- I can waive the obligations that --10 MR. DEMETRIO: Okay. 11 THE COURT: -- the mandatory disclosure project --12 it's a -- it's not anything under the Federal Rules. 13 project this district has adopted for pilot purposes. I can 14 waive that in appropriate cases, especially when there's 15 challenges to jurisdiction or venue. 16 I did waive it last time. 17 MR. DEMETRIO: Okay. 18 THE COURT: You got that order because it's --19 everybody gets it. And -- and so we'll make explicit in our 20 minute order of today's proceedings that the mandatory 21 disclosure obligations are waived at this time so that nobody 22 is -- I don't want anybody doing any work on this relating to 23 discovery until I decide the issue of what discovery is 24 appropriate. So I'll make that clear.

And thank you for bringing that up because I'm sure

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every one of you is going to get that same order, which is sent 1 2 out automatically by the clerk's office. 3 MR. DEMETRIO: Okay. 4 THE COURT: So ... 5 MR. BARTLETT: Your Honor, there was one other issue I 6 had --THE COURT: Yeah. 7 8 MR. BARTLETT: -- just for point of clarification. 9 While the parties are briefing the motion to sequencing 10 discovery, we desired to conduct discovery from third parties, 11 written discovery. So I don't think it would be particularly 12 onerous on any parties to this case, and indeed the discovery 13 wouldn't be directed to the parties in this case, but the 14 issues that would be relevant, I believe, both to forum non 15 conveniens, as well as the merits in this case. 16 THE COURT: Well, who are you talking about? 17 MR. BARTLETT: Sure. One example would be Southwest 18 Airlines, the largest customer in the world of the 737 MAX 19 They have information, I believe, that's germane to airplane. 20 the issues before this Court. 21 The Federal Aviation Administration. 22 I may as well some component part manufacturers. 23 Those are some of the universe of people that I think 24 are in play.

THE COURT: What's the view of Boeing? You're not the

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third party getting the subpoena and having to do the work, but what's your view?

MR. SHULTZ: Your Honor, to the extent that the proposed discovery would go beyond the issues that are presented by our forthcoming *forum non conveniens* motion, we would think it's premature to engage in that discovery at that time and would be a diversion of the parties' and the Court's resources.

THE COURT: Well, the problem is that third parties -you've committed to preserve all relevant records. Third
parties haven't. And I think it's important -- I'm going to
allow you to issue the discovery.

MR. BARTLETT: Thank you, your Honor.

THE COURT: Note that it is for purposes of preservation, not for production. I want them to preserve the information you are requesting. But until I decide the scope of discovery and whether it's going to be me making a decision ultimately on how this case proceeds or some other jurisdiction, I think it's important you have the opportunity to preserve things.

But I think the expense of production of it, I'm going to wait for another day once I've decided what the scope of discovery before me is going to be.

MR. BARTLETT: Very good. And so, your Honor, just so I can make sure I comply -- THE COURT: Yeah.

MR. BARTLETT: -- with this Court's orders, basically we're talking about sending them preservation letters as opposed to production requests.

THE COURT: However you want to do it.

MR. BARTLETT: Sure. Okay.

THE COURT: Whether you do it by way of a production request or a subpoena -- they're third parties, so it would be a subpoena.

MR. BARTLETT: Right.

THE COURT: But tell them in a cover letter that the Court is not requiring production at this time but simply that you preserve those documents, whatever you think is going to be paid attention to more by the third parties.

MR. BARTLETT: Very good.

THE COURT: If a subpoena gets their attention more than a production -- or a preservation notice, I'm fine with you issuing a subpoena as long as you put in your cover letter that production of the documents is not required at this time, merely preservation.

MR. BARTLETT: Very good.

THE COURT: Will that protect your interests?

MR. BARTLETT: It will. Thank you.

THE COURT: Okay. I think that's why you want to do this.

1 MR. BARTLETT: That's right. 2 THE COURT: So all plaintiffs have leave to do that. 3 But, you know, you shouldn't -- there's no need to send ten 4 subpoenas to Southwest. If one is going on behalf of everyone 5 else, they're going to save the documents. 6 MR. BARTLETT: We'll coordinate. THE COURT: Okay. 7 8 MR. BARTLETT: Yes. 9 THE COURT: Great. 10 Are there cases pending in other jurisdictions? 11 MR. SHULTZ: Not to Boeing's knowledge, your Honor. 12 THE COURT: Okay. 13 MR. SHULTZ: We've been wondering if one would be 14 filed in another state that would put this into the MDL 15 process, but --16 THE COURT: Well, I was too. 17 MR. SHULTZ: -- so far -- so far there has not been. 18 THE COURT: Okay. All right. 19 Well, sometimes it doesn't work that way. Mr. Hart 20 knows this from the case under the chicken -- chicken antitrust 21 case I have where it's not an MDL because everyone sued in 22 Chicago, and there's 30 of them or 40 of them. So -- but it 23 doesn't matter. It's going to be in front of one judge one way or the other. 24

So how much time do plaintiffs want to respond

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Okay.

1 to the motion to sequence discovery? 2 MR. DEMETRIO: Judge, listening to everything that 3 we've been informed of here, for coordination purposes, I was 4 going to suggest, just to get everybody involved and, you know, 5 cut down on paperwork and electronics before the Court, 6 60 days. 7 THE COURT: That's fine. It delays the case, but the 8 plaintiffs are asking for it. I understand you're -- you've 9 got a lot of people to coordinate with and -- so 60 days is 10 fine. 11 Everyone else agrees to that? 12 MR. ROUTH: Yes, your Honor. 13 THE COURT: On the plaintiff side. Any objection from Boeing? 14 15 MR. SHULTZ: No, your Honor. 16 THE COURT: All right. So 60 days takes us to when, 17 Sandy? 18 THE CLERK: Maybe May 6th. 19 THE COURT: Okay. And how much time do you want to 20 file a reply? 21 MR. SHULTZ: 21 days, your Honor. 22 THE COURT: That's fine. 23 THE CLERK: I think that takes us to Memorial Day. So the day after, which would be the 28th. 24 25 THE COURT: Okay. So that will be fully briefed by

May 28th. There will be a written ruling.

What I'll likely do is I'll set you for a status in late June to give me a target date to give you a ruling on that. I hate to keep delaying things because people want to move ahead with this. But as long as the documents and anything else are being preserved, there's no prejudice in the overall sense of this case, as long as everybody hangs on to what they have. So I'll give you a late June date for a ruling.

THE CLERK: How is June 27th for everybody, 9:00?

MR. BARTLETT: Perfect.

MR. DEMETRIO: That's fine, Judge.

MR. ROUTH: That will work.

MR. WRONA: Yes.

THE COURT: Okay. And I think as other cases get reassigned to me, get removed from state court, that schedule is going to remain the same. If someone feels they -- everyone will be covered by any order I make. But if anyone thinks upon the filing of the brief by the group of plaintiff lawyers who are going to be involved in it that someone needs to file something beyond just a "me too" brief, ask for leave to do it, and you can explain why you have a different position that isn't covered in the brief that's been filed by plaintiffs.

MR. SHULTZ: Your Honor, just from a technical perspective, is there one matter that we should file in as a

lead case or --

THE COURT: Yes.

MR. SHULTZ: I'm concerned about -- I mean, we're presently in a situation where we're worried about having to file our motion to sequence discovery in each case as we remove them and the potential for having to file the motion technically in all of the cases, all of the briefing.

THE COURT: We did this in the chicken antitrust cases too where we have a single number as the number for the case. So the low number, which I believe is the Saputra case, which I think is the first one we had, that will be the number.

18 CV 7686 will be the number that will apply to all filings in this case, even though individual plaintiffs will have their own case.

So no one loses the fact of a case, but for filing purposes, people should use that low number. And we'll put an order out to that effect too.

So there is no need -- so it's very clear, there's no need to file multiple briefs that are identical in each one of these cases.

MR. SHULTZ: And, again, just raising technical questions. Should all the plaintiffs' counsel appear in that case so that electronic service is effective on everybody through the Saputra case?

THE COURT: Probably. We'll give you an order that

will describe how you need to do that.

MR. SHULTZ: Okay.

THE COURT: I'm just going to have to figure out how we did that in the -- in that other antitrust case. But it works effectively in that case where everyone gets notice under the low number in that one case. And I want to do the same here. So we'll put that in the order somehow and make sure that there are not multiple -- everyone gets notice of anything filed in the case, and there's no multiple filings.

This all leads up to -- I -- well, the other question I have, on the plaintiffs' side, is anyone going to file a motion to remand?

(No response.)

THE COURT: Hearing none --

MR. BARTLETT: So a motion to remand.

THE COURT: Back to state court.

MR. BARTLETT: Right. No, I think that the only person who probably evaluated that and may have caused some pause was -- was at least us. And, no, we will not be moving to remand.

THE COURT: Okay. All right.

I'm not saying you can't, but, you know, the law is pretty clear on why the cases are here right now.

MR. BARTLETT: Yeah.

THE COURT: So -- but I just wanted to make sure

because that adds a new wrinkle to the timing.

All right. I need to know -- and you can do it by way of a status. Boeing will know this first -- if you are sued anywhere else so that the issue of this being an MDL is raised. Please just file a status report with the Court --

MR. SHULTZ: Absolutely.

THE COURT: -- copying everyone, but -- or at least filing it, and hopefully the notice will go to every attorney in the case that way.

MR. SHULTZ: Certainly.

THE COURT: Okay. All right.

Do you anticipate -- your intelligence network on the plaintiffs' side is probably pretty good on this. Do you anticipate many more of these cases being filed in state court? There were over 180 people that passed away, I think.

MR. HART: Yes, your Honor.

THE COURT: And as I read it, everyone is from Malaysia [sic] except for one pilot from India and one passenger from Italy. So there are no U.S. plaintiffs. And I would expect most people -- if some people are suing, there's probably going to be a lot more. There's no way to expedite that because I imagine it involves the plaintiffs or the families of the decedents contacting attorneys.

How long does that -- do you think this process will take before we have every plaintiff -- every putative

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      plaintiff, anyone who intends to sue, in court? Any way of
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      even predicting that?
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               MR. ROUTH: I don't believe so, your Honor.
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               THE COURT: Okay. And we don't even know if it would
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      be here. Certainly people could sue -- well, where else could
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      you sue in this case? Boeing's the single defendant, correct?
               MR. SHULTZ: Boeing is the single defendant named in
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      these proceedings, yes.
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               In -- obviously, there may be proceedings in
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      Indonesia. We don't know whether any have been commenced or
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      not that might involve the airline there --
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               THE COURT: Yeah.
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               MR. SHULTZ: -- or other parties there.
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               THE COURT: You can get sued in Seattle too, couldn't
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     you?
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               MR. SHULTZ: I hesitate to speculate --
               THE COURT: Yeah --
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               MR. SHULTZ: -- as to --
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               THE COURT: -- I know.
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               MR. SHULTZ: -- where --
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               THE COURT: That's a --
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               MR. SHULTZ: -- Boeing might be subject to personal
23
      jurisdiction, your Honor.
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               THE COURT: At least that's a potential.
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               MR. DEMETRIO: Everywhere would be the answer.
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1 THE COURT: Yeah. Well, your corporate headquarters 2 I don't know if your principal place of business 3 is -- what have courts determined to be the principal place of 4 business, here or Seattle? 5 MR. SHULTZ: Most often, if Boeing is the sole 6 defendant, we are sued in Chicago, your Honor. 7 THE COURT: Okay. All right. 8 Where are you incorporated? 9 MR. SHULTZ: Delaware. 10 THE COURT: Okay. All right. 11 Well, who knows where else you can get sued. But it 12 looks like the lion's share is going to -- or the majority is 13 going to come here. Okay. 14 Well, we have a June 27th status date. Is there 15 anything else we ought to discuss today? First from 16 plaintiff -- from plaintiffs. Anything else? 17 MR. BARTLETT: Your Honor, just one housekeeping 18 motion. We had -- my co-counsel from Colson Hicks, they had 19 filed a motion to withdraw from our cases. All the plaintiffs 20 are still going to be represented by my firm as well as 21 Mr. Ribbeck's firm. So that was noticed for today. 22 THE COURT: All right. That motion will be granted. 23 MR. BARTLETT: Yeah, okay. 24 THE COURT: Anything else from the plaintiffs

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otherwise?

MR. ROUTH: No, your Honor. MR. DEMETRIO: No, your Honor, but our thanks. THE COURT: Okay. How about Boeing? Anything else? MR. SHULTZ: No, your Honor. Thank you very much. THE COURT: All right. Thank you all. MULTIPLE COUNSEL: Thank you, Judge. THE COURT: Okay. (Concluded at 9:43 a.m.) CERTIFICATE I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter. /s/ LAURA R. RENKE April 1, 2019 LAURA R. RENKE, CSR, RDR, CRR Official Court Reporter